

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

FREDDIE PEACOCK,)
)
)
Plaintiff)
)
)
v.)
)
)
CITY OF ROCHESTER; WAYNE MARKEL;)
ROY IRVING; DEBORAH FOWLER; JOHN J.)
WERNSDORFER; SANDRA J. WERNSDORFER,)
SOLELY AS ADMINISTRATRIX AND)
FIDUCIARY OF THE ESTATE OF JOHN J.)
WERNSDORFER; and JOHN DOE POLICE)
OFFICER;)
)
Defendants.)
)

No. 13-CV-6046 (MAT) (JWF)

**DECLARATION OF NICK BRUSTIN IN OPPOSITION TO DEFENDANTS' MOTION
FOR LEAVE TO AMEND THE ANSWER AND FOR SUMMARY JUDGMENT**

I, **NICK BRUSTIN**, am an attorney duly admitted to practice before this Court. I declare under penalty of perjury and pursuant to 28 U.S.C. § 1746 that the following statements are true and correct.

1. I am a Partner in the law firm of Neufeld Scheck and Brustin, LLP, which represents Plaintiff Freddie Peacock. As such, I am familiar with the facts stated below and submit this declaration to place the relevant documents and information produced during discovery on the record in support of Plaintiff's opposition to Defendants' motion for leave to amend the answer and for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.

2. Annexed hereto as Exhibit A is a true and correct copy of John Wernsdorfer's Police Report dated July 23, 1976.

3. Annexed hereto as Exhibit B is a true and correct copy of excerpts from Freddie Peacock's Criminal Trial conducted on December 13, 14, and 15, 1976.

4. Annexed hereto as Exhibit C is a true and correct copy of excerpts from Thomas M. Vanstrydonck's Deposition taken on April 14, 2015.

5. Annexed hereto as Exhibit D is a true and correct copy of excerpts from Wayne Markel's Deposition taken on August 26, 2014.

6. Annexed hereto as Exhibit E is a true and correct copy of excerpts of the *Huntley* hearing in *People v. Freddie Peacock*, Ind. No. 1976-0989, conducted on October 28, 1976.

7. Annexed hereto as Exhibit F is a true and correct copy of excerpts of the sentencing hearing in *People v. Freddie Peacock*, conducted on January 27, 1977.

8. Annexed hereto as Exhibit G is a true and correct copy of Freddie Peacock's certificate of incarceration from the State of New York Department of Correctional Services.

9. Annexed hereto as Exhibit H is a true and correct copy of Freddie Peacock's final discharge from the New York Division of Parole, dated March 19, 1992.

10. Annexed hereto as Exhibit I is a true and correct copy of Freddie Peacock's motion for post-conviction DNA testing, dated January 11, 2008.

11. Annexed hereto as Exhibit J is a true and correct copy of the stipulated order for post-conviction DNA testing between Freddie Peacock and the Monroe County District Attorney's office, dated April 28, 2008.

12. Annexed hereto as Exhibit K is a true and correct copy of stipulations between the parties regarding DNA evidence in this case, dated April 6, 2015.

13. Annexed hereto as Exhibit L is a true and correct copy of stipulations regarding testimony that J.W. would provide if called at trial in this case, dated July 6, 2015.

14. Annexed hereto as Exhibit M is a true and correct copy of the joint motion to vacate judgment of conviction and to dismiss indictment in *People v. Freddie Peacock*, dated February 4, 2010.

15. Annexed hereto as Exhibit N is a true and correct copy of the order to grant the joint motion to vacate judgment of conviction and to dismiss the indictment in *People v. Freddie Peacock*, dated February 4, 2010.

16. Annexed hereto as Exhibit O is a true and correct copy of excerpts from Freddie Peacock's Deposition taken on August 27, 2014.

17. Annexed hereto as Exhibit P is a true and correct copy of the oral synopsis purporting to summarize Freddie Peacock's alleged admissions.

18. Annexed hereto as Exhibit Q is a true and correct copy of the Grand Jury Referral Form in Freddie Peacock's case, dated July 23, 1976.

19. Annexed hereto as Exhibit R is a true and correct copy of excerpts from the deposition of Fred Bell, the Rule 30(b)(6) witness for the City of Rochester, taken April 15, 2015.¹

20. Annexed hereto as Exhibit S is a true and correct copy of the affidavit of Donald M. Thompson, attorney for Freddie Peacock, dated March 9, 2016.

21. Annexed hereto as Exhibit T is a true and correct copy of Plaintiff's first set of requests for production of documents and things to defendants, dated November 8, 2013.

22. Annexed hereto as Exhibit U is a true and correct copy of Dr. Charles Patrick Ewing's Forensic Psychological Evaluation, dated June 9, 2015.

¹ Although this deposition transcript was previously marked as Confidential Information. Plaintiff sought and was granted leave to incorporate portions of the transcript that are unrelated to the dispute forming the basis for Defendants' request to designate the transcript as Confidential Information, without filing opposition papers under seal.

23. Annexed hereto as Exhibit V is a true and correct copy of Plaintiff Freddie Peacock's Prisoner Data Report, dated July 23, 1976.

24. Annexed hereto as Exhibit W is a true and correct copy of excerpts from Freddie Peacock's *Wade* Hearing, conducted on December 13, 1976.

25. Annexed hereto as Exhibit X is a true and correct copy of Rochester Police Department's Form 1184.

26. Annexed hereto as Exhibit Y is a true and correct copy Wayne Markel's Police Report, bates stamped DA000053.

27. Annexed hereto as Exhibit Z is a true and correct copy of the Affidavit of Clarence Peacock, dated February 20, 2016.

28. Annexed hereto as Exhibit AA is a true and correct copy of the Affidavit of Deacon William Marshall, dated February 25, 2016.

29. Annexed hereto as Exhibit BB is a true and correct copy of Wayne Markel's Police Report, dated July 23, 1976, and bates stamped DA000056.

30. Annexed hereto as Exhibit CC is a true and correct copy of the Victim's Supporting Deposition, dated July 23, 1976 and bates stamped DA000007.

31. Annexed hereto as Exhibit DD is a true and correct copy of excerpts from Deborah Fowler's Deposition taken on September 23, 2014.

32. Annexed hereto as Exhibit EE is a true and correct copy of Freddie Peacock's Booking Photo, bates stamped DA000051.

Dated: March 10, 2016
New York, New York

By:

/s/ Nick Brustein
Nick Brustein
NEUFELD SCHECK & BRUSTIN, LLP

99 Hudson St., 8th Floor
New York, NY 10013
(212) 965-9081
One of the Attorneys for Plaintiff Freddie Peacock

CERTIFICATE OF SERVICE

I, Vishal Agraharkar, hereby certify that a true and accurate copy of the foregoing Declaration of Nick Brustein in *Opposition to Defendants' Motion for Leave to Amend the Answer and for Summary Judgment* served via ECF on March 10, 2016 upon the following counsel:

Patrick Beath
John Campolieto
City of Rochester
City Hall, Room 400-A
30 Church Street
Rochester, NY 14614-1295

Counsel for the City of Rochester Defendants

/s/ Vishal Agraharkar
Attorney